

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Petition of the California Public Utilities Commission and The
People of the State of California For an Additional Delegation
of Authority to Conduct NXX Code Rationing

File No. NSD-L-98-136

Implementation of the Local Competition Provisions of the
Telecommunications Act of 1996

CC Docket No. 96-98

COMMENTS OF SBC COMMUNICATIONS INC.

In its petition, the California Public Utilities Commission ("CPUC") requests authority to implement central office ("CO" or "NXX") code rationing in area codes before it adopts a relief method or implementation date, claiming that rationing is necessary for California to implement area code relief.¹ SBC Communications Inc. ("SBC") agrees with many of the facts included in the CPUC's petition, but it cannot agree with the CPUC's conclusion. SBC cannot agree with the CPUC's belief that CO code rationing is a "valuable component of area code relief planning and implementation," or that it is "absolutely impossible" for the CPUC to implement relief when jeopardy is declared. CO code rationing is not a solution, but rather is clear evidence of the failure of the California area code relief planning process to provide timely and adequate relief. SBC believes that with effective area code relief planning and execution, the need for rationing should be rare.

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¹Petition of California Public Utilities Commission and the People of the State of California for Granting Additional Authority to Conduct NXX Code Rationing (dated Nov. 3, 1998) [CPUC Petition].

Nonetheless, SBC recognizes that the existing area code relief situation in California requires that CO code rationing continue until relief can be provided for many area codes currently in the relief planning process. SBC therefore would support a conditional, temporary extension of additional rationing authority to the CPUC. The goal of this conditional extension should be to refocus the CPUC and the industry on improving the relief planning and implementation process in California, rather than on perpetuating this chronic condition through continued rationing.

THE CALIFORNIA RELIEF PROCESS AND RATIONING

For almost two years, at least 70% of the area codes in California have been subject to central office (CO) code rationing. In some areas (such as San Francisco, San Diego, and portions of Los Angeles), certain area codes have been in rationing for years. Area code relief, when it has been implemented, has been in the form of two-way geographic splits, which have provided relief too little, too late. The relief plans have taken so long to develop and implement that by the time relief is provided, the "pent up demand" created by months or years of rationing consumes a substantial portion of the new area code, leaving so few codes to meet future demand that the area code remains in jeopardy and requires additional relief.

As a result, CO code rationing in California has grown increasingly severe, and it has become self-perpetuating. Today, there are **more than 800 outstanding NXX code requests** pending in the State of California – enough to consume an entire area code in "pent up demand" alone. Each and every month the North American Numbering Plan Administrator ("NANPA") grants only a small fraction of the requests received. Under the current California

relief planning schedule, this self-perpetuating system will continue for years, unless steps are taken immediately to provide more effective area code relief in a more timely manner.²

Even more disconcerting, rationed CO codes are doled out to carriers through an unlawfully discriminatory rationing process. The CPUC's lottery is designed to disadvantage carriers who need more than one code in a rate center area. Under the CPUC's rationing plan, 60 percent of the available CO codes assigned each month are reserved for carriers seeking a first CO code in a rate center area. All carriers who seek an additional NXX code in a rate center area (including incumbent LECs and established wireless providers) are relegated to the remaining 40 percent of available codes. Not surprisingly, this discriminatory plan leads to discriminatory results: Pacific Bell is roughly one-half as successful as the rest of the industry in securing a code in the CPUC's monthly lottery.³

The CPUC claims that lotteries must continue, or carriers will be left without numbering resources, which it claims "would adversely affect the evolving competitive telecommunications marketplace, and would deny California consumers the benefits of

² For additional background information on the area code relief planning situation in California, see "Pacific Bell's Emergency Petition To Modify Decision 96-12-086," *Orders Instituting Rulemaking and Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, R.95-04-043 & I.95-04-044 (Cal. PUC filed Oct. 15, 1998). A copy of this petition accompanies these comments in Attachment A.

In response to Pacific Bell's petition and the detailed showing of competitive harm rationing was causing Pacific Bell (see pp. 20-22 & Attachments A&B), the CPUC did not take immediate action. Instead, it opened a new rulemaking on the subject of area code relief, and informed all carriers that it would not issue a ruling on that subject for another year – thus ensuring another year of delay before the CPUC addresses many of the problems associated with the area code relief process in California. See "Order Instituting Rulemaking," Order Instituting Rulemaking on the Commission's Own Motion Regarding Commission Policy on Area Code Relief (filed Dec. 17, 1998). A copy of the CPUC order accompanies these comments in Attachment B.

³ As of last October, Pacific Bell "won" less than 10 percent of its code requests in the lottery, while the industry average is over 20 percent. See Attachment A, at 21 & n.55.

competition."⁴ What the CPUC does not acknowledge is that the lottery process itself is causing shortages and is adversely affecting carriers such as Pacific Bell today. SBC, with affiliates serving as major local service providers in the State of California (including Pacific Bell and Pacific Bell Wireless), is well aware of the extent of the harm caused by the extended and discriminatory rationing of CO codes in that State. Pacific Bell has been severely harmed by the continuous, extended, and discriminatory rationing of CO codes. In the greater San Francisco Bay Area in the year of 1998 alone, Pacific Bell was **unable to meet customer requests for almost 275,000 telephone numbers**. The lack of available numbering resources has had a very real and substantial impact on the ability of carriers such as Pacific Bell to compete in the local exchange marketplace.

THE CALIFORNIA RELIEF PLANNING PROCESS MUST CHANGE

The situation in California today underscores the need for and wisdom of the Commission's Pennsylvania Numbering Order.⁵ If a lottery represents a failure of the area code relief planning process, as it clearly does, the situation in California today represents a complete breakdown of that process.

The CPUC claims that it cannot ensure timely area code relief, stating "it is absolutely impossible to implement relief 'when jeopardy has been declared,'" due to the process

⁴ See Petition for Reconsideration by the California Public Utilities Commission and the People of the State of California, at 11, *Request for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, NSD File No. L-97-42, CC Docket No. 96-98 (dated Nov. 5, 1998).

⁵ Memorandum Opinion and Order and Order on Reconsideration, *Request for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, NSD File No. L-97-42, CC Docket No. 96-98 [FCC 98-224] (released Sept. 28, 1998).

currently used in California to declare jeopardies and the requirements of the California statutes.⁶ However, "timely and efficient" relief is precisely what the Act and the FCC regulations require.⁷ The California relief planning process must be changed to comply.

First and foremost, the CPUC can and should require that planning be initiated earlier. Although Section 7931 of the California Public Utility Code requires 30 months of planning and public meetings in the affected geographical areas, nothing prevents the CPUC or the industry from meeting these requirements or implementing relief in a timely manner.⁸ Time for these meetings simply must be accommodated in the planning process, and steps should be taken to find ways to make the entire process more efficient and effective. The current California statute requires relief planning to begin 30 months before implementation of new area codes. The NPA Code Relief Planning & Notification Guidelines require a 5 year (60 month) minimum relief planning period.⁹

The industry, code administration, and the CPUC all contributed to the breakdown of the relief planning process, but a principal contributing factor has been the CPUC's own decisions – its reluctance (until recently) to adopt area code overlays and its past reliance on two-way geographic splits, which require a longer implementation interval and provide a short period of relief than overlay area codes. Nothing in the California statutes prevents the CPUC from

⁶ *CPUC Petition*, at 4. It is worth noting that the new statute, which contains the detailed planning process that the CPUC claims makes it "absolutely impossible" to avoid rationing, was not in effect for the past two years, during which time 70 percent or more of California area codes were rationed. The new statute, which the CPUC contends creates this "impossibility," was initially proposed by the CPUC and sponsored by the CPUC to the legislature.

⁷ See 47 C.F.R. § 52.9(a)(1).

⁸ A copy of this statute is provided in Attachment 3 to the *CPUC Petition*.

⁹ See Industry Numbering Committee, "NPA Code Relief Planning & Notification Guidelines," at § 5.0 et seq. (INC Doc. No. 97-0404-016, reissued July 13, 1998) <www.atis.org/clc/inc>.

selecting relief plans that will provide relief for a sufficient period of time to comply with industry guidelines, or completing the relief process in time to avoid rationing.

In summary, if the relief planning process is started in accordance with the industry guidelines, and appropriate relief methods are selected to provide a sufficient period of relief to comply with the NPA Relief Planning Guidelines (which, in California, would require selection of overlay area codes in many instances), there is no reason why rationing needs to be a constant process in California.

DELEGATING TEMPORARY AND CONDITIONAL AUTHORITY

Giving the CPUC blanket authority to ration CO codes in area codes where it has not chosen a relief method or established an implementation date clearly is not an acceptable response to the CPUC's petition – such a result would not remedy the illegal discrimination in the California lottery, and it would not even begin to fix the area code relief planning system in California. If anything, it would only serve to justify and entrench the existing broken and discriminatory system.¹⁰ Merely denying the request and declaring the current lottery structure unlawfully discriminatory would not necessarily resolve the situation either.¹¹ What is needed,

¹⁰ If there were any doubt on this score, the CPUC's claim that it is "absolutely impossible" to avoid area code jeopardies before relief plans are adopted makes clear that if the Commission unconditionally grants the CPUC's petition, the shortage of CO codes in California will continue indefinitely. This could send the message to other state commissions that rationing can be used to substitute for timely and adequate area code relief. That would be precisely the wrong signal for the Commission to send to the state commissions.

¹¹ While the industry and NANPA have the ability to implement rationing under Section 9.5 of the CO Code Assignment Guidelines (*see* footnote 8, above), the Commission should not rely solely on this process to solve the problem in California. In other states, the industry has been able to agree on nondiscriminatory rationing in accordance with Section 9.5 of the CO Assignment Guidelines, and if the Commission were to deny the CPUC's request (particularly if it makes clear that the current scheme violates Rule 52.9), the industry might be able to reach agreement on a lawful rationing scheme. In fact, the primary issue that divided the California industry in the past (and gave rise to the CPUC's involvement when the lottery was created) was the issue of whether the lottery should give preferences to new entrants. The fact that new entrants believed at that time that the CPUC might give them an

instead, is a more structured approach, one that will end the unlawful preferences in the CPUC lottery and establish a process by which numbering resources would once again be made available in the State of California for all carriers in a timely and nondiscriminatory manner.

To achieve this goal, SBC recommends that the Commission grant the CPUC temporary, conditional authority to ration CO codes in area codes before it has selected a relief method or established an implementation date. This temporary authority would extend no more than six months, and would be conditioned on the CPUC, working in conjunction with the North American Numbering Council ("NANC") and NANPA, where appropriate, doing the following: (1) eliminating all preferences for carriers in the California monthly CO code lottery as soon as possible, and establishing a nondiscriminatory rationing scheme in compliance with all rules and regulations of the Commission no later than 30 days after the grant of additional authority, (2) establishing a program and detailed timetable (within 60 days from the date that the Commission grants temporary authority) for providing relief to the area codes currently in the lottery, and (3) establishing and implementing a definitive plan with a detailed timetable (within 120 days from the date that the Commission grants temporary authority) for improving the California process for planning and executing area code relief. These conditions are discussed below:

(1) Compliance With The Act And Commission Rules And Regulations.

First and foremost, the CPUC's lottery must be brought into compliance with the Commission's rules and regulations. This means that the discriminatory 60 percent-/40 percent

advantage in the lottery could have encouraged disagreement at that time, and consensus might be more possible today. However, at this point it is unclear whether the industry could reach the consensus necessary to direct NANPA to implement a nondiscriminatory rationing plan under the CO Code Administration Guidelines.

allocation of codes must be eliminated, to bring the lottery into compliance with Rule 52.9(a)(2). Rule 52.9(a)(2) requires that numbering resources be administered so as to "[n]ot unduly favor or disfavor any particular industry segment or group of telecommunications consumers."¹² The CPUC's lottery is clearly designed to (and in practice clearly does, as discussed above) unduly disfavor established carriers (such as Pacific Bell) and unduly favor new entrants. Because the lottery violates Rule 52.9, the CPUC's imposition of the lottery exceeds the scope of authority delegated by the Commission to the CPUC.¹³

This unlawful discrimination must be eliminated as soon as possible, no later than 30 days after the temporary authority is granted. To ensure that the revised lottery complies with the Commission's requirements, the CPUC should work with the NANC to develop a fair and nondiscriminatory lottery process. The CPUC should be required to inform the Commission staff in writing once this new lottery has been instituted.

(2) Timetable To End Existing Lotteries And Delegation of Additional Authority.

The CPUC should prepare a detailed proposal by which it will plan and implement area code relief in those area codes where rationing exists but the CPUC has not selected a relief method or implementation date. This proposal should include detailed timetables for the planning and implementation process, which comply with the industry guidelines and California Statutes. NANPA and the NANC could be directed to provide assistance to the CPUC and industry in developing this plan.

¹² 47 C.F.R. § 52.9(a)(2).

¹³ See 52 C.F.R. § 52.19(b).

(3) Improved Area Code Relief Planning and Implementation Process

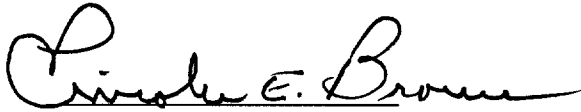
The CPUC should work with the industry, NANPA, and the NANC to develop a plan for improving the current relief planning and execution process to ensure that future area code relief can and will be provided on a timely basis consistent with the industry relief planning guidelines. The plan should include specific actionable steps and detailed timetables for execution of those plans. The goal should be to begin improvement steps immediately and to complete the implementation of the plan no later than 12 months from the date that the Commission grants the additional temporary authority. Again, NANPA and the NANC could provide assistance to the CPUC and industry in developing this plan.

CONCLUSION

As the Commission correctly recognized in the Pennsylvania Numbering Order, one way to encourage timely area code relief is to limit state authority over rationing, in order to ensure that rationing is not used as a substitute for area code relief. California currently faces the most severe rationing of NXX codes in the nation, and it needs to improve its processes to make timely and sufficient decisions on area code relief plans in order to end rationing as soon as possible and to avoid such shortages in the future. The Commission should grant the CPUC only temporary additional authority, subject to the conditions proposed above, to conduct CO code rationing.


Respectfully submitted,

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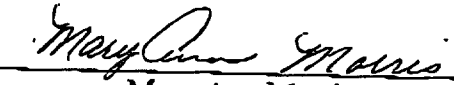
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February 5, 1999.

Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing "Comments of SBC Communications, Inc." in NSD-L-98-136, CC Docket 96-98 has been served on February 5, 1999 to the Parties of Record.


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